

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MELISSA ORTIZ

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. SECTION 1692

Brief description of cause:
Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Melissa Ortiz

CIVIL ACTION

v.

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

4/15/11
Date

Craig Thor Kimmel
Attorney-at-law

Melissa Ortiz
Attorney for

215-540-8888

877-788-2864

kimmel@CreditHaw.com

Telephone

FAX Number

E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 3349 W. Hayward PL, Denver, CO 80211

Address of Defendant: 507 Prudential Rd, Harsham, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. 1692
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 4/15/11 Craig Thor Kimmel 57100
Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/15/11 Craig Thor Kimmel 57100
Attorney-at-Law Attorney I.D.#

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

3
4 MELISSA ORTIZ,

5 Plaintiff

6 v.

7 NCO FINANCIAL SYSTEMS, INC.,

8 Defendant

)
)
)
)
) **Case No.:**

) **COMPLAINT AND DEMAND FOR**
) **JURY TRIAL**

)
) **(Unlawful Debt Collection Practices)**

10
11 **COMPLAINT**

12 MELISSA ORTIZ ("Plaintiff"), by and through her attorneys, KIMMEL &
13 SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS,
14 INC. ("Defendant"):

15
16 **INTRODUCTION**

17 1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection
18 Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA).

19
20 **JURISDICTION AND VENUE**

21 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),
22 which states that such actions may be brought and heard before "any appropriate
23 United States district court without regard to the amount in controversy," and 28

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3
4 3. Defendant conducts business and has an office in the Commonwealth
5 of Pennsylvania, and therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

7
8 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
9 2202.

10 PARTIES

11 6. Plaintiff is a natural person residing in Denver, Colorado, 80211.

12
13 7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. §
14 1692a(3).

15 8. Defendant is a national debt collection company with its corporate
16 headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044-
17 2308.

18
19 9. Defendant is a debt collector as that term is defined by 15 U.S.C. §
20 1692a(6), and sought to collect a consumer debt from Plaintiff.

21 10. Defendant acted through its agents, employees, officers, members,
22 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
23 representatives, and insurers.
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PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

15 12. In particular, the FDCPA broadly enumerates several practices
16 considered contrary to its stated purpose, and forbids debt collectors from taking
17 such action. The substantive heart of the FDCPA lies in three broad prohibitions.
18 First, a "debt collector may not engage in any conduct the natural consequence of
19 which is to harass, oppress, or abuse any person in connection with the collection
20 of a debt." 15 U.S.C. § 1692d. Second, a "debt collector may not use any false,
21 deceptive, or misleading representation or means in connection with the collection
22 of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use unfair
23 or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. §
24
25

1 1692f. The FDCPA is designed to protect consumers from unscrupulous
2 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
3 unconscionable collection methods, conduct which harasses, oppresses or abuses
4 any debtor, and any false, deceptive or misleading statements in connection with
5 the collection of a debt.
6

7 13. In enacting the FDCPA, the United States Congress found that “[t]here
8 is abundant evidence of the use of abusive, deceptive, and unfair debt collection
9 practices by many debt collectors,” which “contribute to the number of personal
10 bankruptcies, to marital instability, to the loss of jobs, and to invasions of
11 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
12 laws and procedures for redressing debt collection injuries to be inadequate to
13 protect consumers. 15 U.S.C. § 1692b.
14

15 14. Congress enacted the FDCPA to regulate the collection of consumer
16 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
17 abusive debt collection practices by debt collectors, to insure that debt collectors
18 who refrain from using abusive debt collection practices are not competitively
19 disadvantaged, and to promote consistent State action to protect consumers against
20 debt collection abuses.” 15 U.S.C. § 1692e.
21
22
23
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FACTUAL ALLEGATIONS

15. At all pertinent times hereto, Defendant was hired to collect a consumer debt allegedly owed by Plaintiff on Sears account.

16. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

17. On August 18, 2010, Plaintiff contacted Defendant regarding making payment on a debt owed to Sears.

18. Defendant's representative, "Matthew Clausen" (hereinafter "Mr. Clausen"), threatened Plaintiff that Defendant would sue her if she did not pay the full amount that day.

19. Plaintiff explained to Mr. Clausen that she was out of work, but had recently secured a new job and once she started working, she could make payments.

20. Mr. Clausen told Plaintiff that she had to pay \$338.67, by an electronic check dated for August 30, 2010, or Defendant would sue her.

21. Plaintiff again attempted to explain to Mr. Clausen that she could not make a payment of \$338.67 by August 30, 2010.

22. In response, Mr. Clausen threatened Plaintiff that if she did not make the payment arrangements within two (2) hours that Defendant would sue her and begin the process of seizing her assets and bank accounts immediately.

1 23. Sacred by Defendant's threats to sue her and seize her assets and bank
2 accounts, Plaintiff authorized a payment of \$338.67 for August 30, 2010.

3
4 24. Thereafter, Defendant never sent Plaintiff written notification of its
5 intent to submit the post-dated check; instead, on August 30, 2010, Defendant
6 submitted the post-dated check.

7 25. Because Plaintiff was unable to get the funds, the post-dated check
8 bounced and she incurred bank fees.

9
10 26. Thereafter, on September 7, 2010, Plaintiff contacted Defendant in an
11 attempt to resolve this matter.

12 27. Again, Plaintiff spoke with Mr. Clausen who threatened her that she
13 would be sued if she did not make full payment that day.

14
15 28. Plaintiff asked to make other arrangements, but Mr. Clausen insisted
16 that she had to make full payment on that day or Defendant would sue her.

17 29. Mr. Clausen claimed to Plaintiff that she was "not taking the matter
18 seriously," and that he decided Plaintiff was not going to pay and that he was
19 sending her account up to Legal immediately.

20
21 30. Panicked, Plaintiff told Defendant that she wanted to pay the debt, but
22 just needed other arrangements.

23
24 31. Mr. Clausen would not speak with Plaintiff, and instead, hung-up on
25 her.

1 32. Plaintiff called back to Defendant three (3) times, and was told each
2 time that Mr. Clausen refused to speak with her.

3
4 33. On her fourth attempt, Plaintiff asked to speak with a supervisor and
5 was provided with the name of the Division Manager, Troy Tarter.

6 34. Plaintiff left a voicemail message for Mr. Tarter; however, Defendant
7 never returned her call.

8
9 35. Instead, starting on or about September 8, 2010, Defendant constantly
10 and continuously placed collection calls to Plaintiff's home and cellular telephone
11 numbers seeking and demanding payment for an alleged debt owed.

12 36. Defendant contacted Plaintiff, on average, two (2) times a day for
13 more than one week.

14
15 37. Finally, upon information and belief, within five (5) days of its initial
16 conversation with Plaintiff on August 18, 2010, Defendant failed to send Plaintiff
17 written notification informing her of her rights to dispute the debt and/or request
18 verification of the debt.

19
20 38. To date, Plaintiff still has not received any written notification from
21 Defendant informing her of her rights to dispute the debt and/or request
22 verification of the debt.

23
24 39. Defendant conducted its debt collection activities in ways that were
25 factually misrepresented and in violation of the FDCPA.

CONSTRUCTION OF APPLICABLE LAW

40. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

41. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

42. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude

1 which includes the ignorant, the unthinking, and the credulous, and the fact that a
2 false statement may be obviously false to those who are trained and experienced
3 does not change its character, nor take away its power to deceive others less
4 experienced.” Id. The least sophisticated consumer standard serves a dual
5 purpose in that it ensures protection of all consumers, even naive and trusting,
6 against deceptive collection practices, and protects collectors against liability for
7 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
8 1318.
9
10

11
12 **COUNT I**
13 **DEFENDANT VIOLATED THE**
14 **FAIR DEBT COLLECTION PRACTICES ACT**

15 43. Defendant violated the FDCPA based on the following:

- 16 a. Defendant violated §1692 generally;
- 17 b. Defendant violated §1692d of the FDCPA by engaging in conduct
18 the natural consequence of which is to harass, oppress, or abuse
19 the Plaintiff in connection with the collection of a debt;
- 20 c. Defendant violated §1692d(5) of the FDCPA by causing a
21 telephone to ring and engaging Plaintiff in telephone conversations
22 repeatedly and continuously with the intent to annoy, abuse or
23 harass;
24
- 25 d. Defendant violated §1692e of the FDCPA by using false and

1 deceptive representations in connection with the collection of a
2 debt;

3
4 e. Defendant violated §1692e(4) of the FDCPA by representing that
5 non payment of the alleged debt will result in the seizure or
6 garnishment of Plaintiff's property and wages even though such
7 action is not intended to be taken;

8
9 f. Defendant violated §1692e(5) of the FDCPA by threatening to
10 take action that cannot be legally taken;

11 g. Defendant violated §1692e (10) of the FDCPA by using false and
12 deceptive means to collect a debt;

13
14 h. Defendant violated §1692f of the FDCPA by using unfair and
15 unconscionable means to collect or attempt to collect a debt;

16 i. Defendant violated §1692f(2) of the FDCPA by accepting
17 payment instrument postdated by more than five days without
18 notifying in writing the debt collector's intent to deposit such
19 check not more than ten or less than three business days prior to
20 such deposit; and
21

22 j. Defendant violated §1692g of the FDCPA by failing to send
23 written notification, within five (5) days after its initial
24 communication with Plaintiff, advising Plaintiff of her rights to
25

1 dispute the debt or request verification of the debt.

2 44. As a direct and proximate result of one or more or all of the statutory
3 violations above, Plaintiff has suffered emotional distress.
4

5 WHEREFORE, Plaintiff, MELISSA ORTIZ, respectfully requests judgment
6 be entered against Defendant, NCO FINANCIAL SYSTEMS, INC., for the
7 following:
8

- 9 a. Declaratory judgment that Defendant's conduct violated the Fair
10 Debt Collection Practices Act,
 - 11 b. Statutory damages pursuant to the Fair Debt Collection Practices
12 Act, 15 U.S.C. § 1692k,
 - 13 c. Actual damages,
 - 14 d. Costs and reasonable attorneys' fees pursuant to the Fair Debt
15 Collection Practices Act, 15 U.S.C. § 1692k
16
 - 17 e. Any other relief that this Honorable Court deems appropriate.
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, MELISSA ORTIZ, demands a jury trial in this case.

DATED: 4/15/11

RESPECTFULLY SUBMITTED,
KIMMEL & SILVERMAN, P.C.

By: 

Craig Thor Kimmel
Attorney ID # 57100
Kimmel & Silverman, P.C.
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